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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6132 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO of the judgement?
4. Whether this case involves a substantial question : NO of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

TRILOKSING @ LALO @ RAMESH S/O SHIVBACHCHANSING CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR MA BUKHARI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad passed an order on 23-3-1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short PASA Act), detaining one Triloksing @ Lalo @ Ramesh, S/o. Shrivbachchansing Chauhan, who is the petitioner before this Court in this matter. The authority in the grounds of detention stated the nine offences registered against the petitioner under the Bombay Prohibition Act. The authority took into consideration two statements of

anonymous witnesses in connection with unregistered offences. The authority has recorded a satisfaction about the correctness and genuineness of the statements and fear expressed by the witnesses and then exercised the powers under Section 9(2) of the PASA Act. After taking into consideration the possibility of resorting to less drastic alternative remedy the authority concluded that the detention under the PASA Act was the only remedy that can be resorted to in order to immediately prevent the petitioner from pursuing his illegal and antisocial activities.

2. The petitioner has approached this Court with this petition challenging the order of detention on various counts.

3. Mr. Prajapati learned advocate for the petitioner has relied on only one ground, namely, that there was no time for the detaining authority to apply its mind for exercise of powers under Section 9(2) of the PASA Act. He submitted that the petitioner was arrested in connection with 9 offences registered against him on 22-3-1999 at 3.00 p.m. The statements of witnesses were recorded on that very day. The detaining authority has verified the statements on next day that is 23.3.1999 and has passed the order on that very day. Mr. Prajapati therefore submitted that the detaining authority had no time to apply its mind for verifying the correctness and genuineness of the statements and fear expressed by the witnesses and thereafter exercise the powers under Section 9(2) of claiming privilege of not disclosing the identity of the witnesses. He submitted that this has infringed the right of the petitioner of making an effective representation.

4. Mr. Bukhari learned AGP appearing for the respondents submitted that the authority has acted vigilantly and further submits that at times it becomes necessary so to do. He however could not point out from the affidavit in reply filed by the detaining authority as to when was the proposal received, when was the file scrutinised and perused and at what point of time the correctness and genuineness of the statements and fear expressed by the witnesses was verified and what were the ground of detention drafted and the order passed.

5. In this regard what transpires is that the statements were verified by the detaining authority on 23-3-1999 and the order was passed on that very day. While doing so the authority recorded subjective satisfaction for exercise of powers under Section 9(2) of

the PASA Act.

When an authority exercises powers under Section 9(2) of the PASA Act it has to undertake an exercise of satisfying itself about the correctness and genuineness of the fear expressed by the witnesses. For this purpose it is required to be assessed from the material before it and the statements of the witnesses in this regard. The authority has to consider that exercise of this power would have direct bearing on the right of the detenu of making an effective representation. The authority has therefore to strike a balance between the right of the detenu of making a representation on one hand and the public interest on the other. This responsible task is to be performed by the authority after a careful consideration of the material. This would definitely require time. The affidavit-in-reply does not deal with this question at all. The authority has not clarified as to when the proposal was received, at what point of time the statements were verified, what material was considered for exercise of powers under Section 9(2) of the PASA Act, when the orders were prepared and passed. All this exercise was done in one day and in absence of any material coming forward from the detaining authority in the affidavit in reply, this court is at loss to appreciate as to how the responsible task as stated above was carried out by the detaining authority. In this regard a decision in the case of K.C. Kuhar v. State of Gujarat as reported in 1993(2) GLR 1659 may be profitably employed in service. In view of the above decision and facts of the present case, the petition deserves to be allowed on this ground alone.

6. In view of the aforesaid discussion, the petition deserves to be allowed and the same is hereby allowed. Order passed by Commissioner of Police, Ahmedabad city, Ahmedabd on 23-3-1999, detaining the petitioner under the provisions of PASA Act is hereby quashed and set aside. The petitioner-detenu Triloksingh @ Lalo @ Ramesh, S/o. Shambachansingh Chauhan of Railway Colony, Room No. 254, Asarva, Ahmedabad be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)